



Apparel for everyone.

TERMS AND CONDITIONS

Company means JB's N.Z. Pty. Ltd. (incorporated in Australia) NZBN: 9429041573723/GST Number: 115-882-066.

Customer(s) means any person, firm, company or other entity which the Company contracts to supply goods or services.

1. **Orders**

All orders for goods or services from Customers which may be accepted by the Company are accepted on the following conditions (**Conditions**). Any conditions of purchase offered by Customers which purport to add to or are otherwise inconsistent with the Conditions shall be deemed to be waived by the Customer upon placement of an order by the Customer with the Company unless such conditions of purchase are expressly agreed to by the Company in writing.

No order accepted by the Company (in writing, orally or by conduct) may be cancelled or deferred by the Customer without the prior written consent of the Company.

The Company reserves the right to require orders to be for a minimum value determined by the Company from time to time and to otherwise accept in whole or in part any orders for goods or services by Customers or to decline such orders.

2. **Quotations and Published Prices**

Quotations issued by the Company are open for the Customer to whom the quotation is addressed to place an order within 30 days from the date of quotation (unless a shorter period is expressly provided for in the quotation or the quotation is withdrawn by the Company) and such orders are subject to acceptance by the Company in accordance with Clause 1.

The issue of a quotation and other publication of prices by the Company do not constitute offers to supply, and are subject to changes in the costs of raw materials, exchange rate fluctuations and other increases in the cost to the Company of supplying the goods or services and any errors by the Company in listing, determining or calculating the prices.

Quotations and orders placed by Customers on such quotations are based on the information and details provided by the Customer to the Company. Where exact specifications of the scope, nature or extent of the work are not available to the Company at the time of providing a quotation, such quotations are estimates only.

In the event the cost to the Company of supplying goods or services or the scope, nature or extent of the work required to be undertaken by the Company to supply the goods or provide the services change or the Customer requests any variations to be made (which may be consented to by the Company in writing), the Customer will be responsible for and pay for all extra costs and charges associated with such changes.

3. **Price**

The Company reserves the right to vary the prices charged from time to time without prior notification. Published and quoted prices are (unless otherwise indicated) for the sale of goods or provision of services Ex Works (the Company's premises) and are exclusive of any applicable goods and services tax and any applicable taxes and duties and costs and charges associated with the carriage and insurance of goods, and all such items shall be included as an additional item in the invoiced price.

The Company shall be entitled to increase the price for goods and services if there is an increase in the cost to the Company of supplying the goods or services or an error by the Company in listing, determining or calculating the price.

Goods and services (including, without limitation, changes in the scope, nature or extent of work) will be invoiced at the price ruling at the date of delivery.

4. **Payment**

Where credit facilities have been approved by the Company, payment for goods and services shall be due and payable within 30 days of the date of statement. Where credit facilities have not been approved by the Company, payment for goods and services shall be payable at the time of order or prior to delivery of the goods (as notified by the Company).

The Company reserves the right to terminate all or part of the Customer's credit facility (without notice) at any time and to require full or part payment with order or prior to delivery (as notified by the Company).

The Company may (without notice) charge interest on any overdue payments at the rate equal to the rate (from time to time) that the Company's principal bank charges its business customers for unauthorised or in default overdraft facilities for the length of any such delay in payment. Without limiting any of the Company's other rights, the Company reserves the right to withhold further deliveries of goods or the provision of services until all arrears from the Customer have been paid.

The Company also reserves the right to the extent permitted by law to charge all bank and other credit provider or facility fees and charges incurred by the Company in processing the Customer's payment, including (without limitation) by credit card or for dishonoured payment.

The Customer agrees to pay all costs incurred by the Company for the collection of any monies owing by the Customer to the Company which are not paid when due, including (without limitation) commission charges by collection agencies and legal costs and disbursements (on an own solicitor/client basis).

5. **Supply and Delivery**

Supply of goods and services by the Company to the Customer shall (unless other terms of supply have been agreed and accepted by the Company in writing on an order by order basis) be Ex Works (the Company's premises).

Delivery of, and transfer of risk of loss and damage to, goods to the Customer shall be deemed to take place upon the Company making the goods available for collection by the Customer Ex Works (the Company's premises) (unless other terms of supply have been agreed and accepted by the Company in writing on an order by order basis). The Company shall not be responsible for any loss or damage to goods in transit or otherwise once they have been delivered to the Customer as aforesaid. If (where applicable) the Customer has not made or notified the Company of arrangements for delivery, the Customer hereby authorises and requests the Company to nominate a carrier to take delivery of the goods from the Company on behalf and at the risk of the Customer for carriage to the Customer or as the Customer directs. Arrangements for insurance of the goods are the responsibility of the Customer. Where the Company nominates a carrier on behalf of the Customer, all freight and other carriage charges will be billed to the Customer.

Signature of any delivery note by any agent, employee or representative of the Customer (or where delivery is to the Customer's carrier, by such carrier or its agent) shall be conclusive proof of delivery.

The Company will render to the Customer such reasonable assistance as may be necessary to press claims on carriers provided the Customer must have notified the Company and the carrier in writing immediately if any loss or damage is discovered on receipt of goods and must lodge a claim on the carrier within 3 days of the date of receipt of the goods.

6. **Delivery**

Whilst the Company endeavours to effect deliveries or execute orders by the requested or estimated date, the Company shall not be liable for any loss or damage whatsoever (including, without limitation, special or consequential loss or damage) caused directly or indirectly by any early delivery or delay or failure to deliver. The Company reserves the right to make delivery in instalments and to invoice each instalment as a separate order.

7. **Specifications**

The Company's policy is one of continuous development, and the Company therefore reserves the right to improve, change, alter or discontinue fabrics, materials and other specifications without prior notice. All illustrations and samples are intended as approximate representations only and are not binding in detail with regard to finishes, colour, shades, fabrics, materials and other specifications. To the fullest extent permitted by law, the Company accepts no liability whatsoever for any loss or damage (including, without limitation, consequential loss or damage), directly or indirectly, arising out of or in connection with same.

8. **Materials**

The Customer acknowledges that due to the nature of the goods and services supplied by the Company reasonable tolerances and variations in the quality, sizes, finishes, weight, measurements, fabrics, materials, designs, patterns, shades, tints, colours, shrinkage and other specifications of the goods and services may occur, and the Customer agrees to accept same.

If the Customer intends to print, embroider or otherwise alter ordered goods in anyway, the Customer is encouraged to test the goods actually delivered prior to printing, embroidering or otherwise altering in anyway, as the Company will not to the fullest extent permitted by law be liable for or accept for return any goods which have been printed, embroidered or otherwise altered in anyway.

9. **Special Orders**

Orders for specially ordered goods or services may not be varied, cancelled or deferred by the Customer without the prior written consent of the Company.

The Customer acknowledges and agrees that the Company may require full or part payment at the time of order or prior to production or delivery (as notified by the Company).

In the event the scope, nature or extent of the work required to be undertaken by the Company to produce the goods or provide the services change (including, without limitation, as a result of the Customer not providing artwork in the prescribed form, requesting special freight, provision of sample or mock-up of goods, ordering special material, etc.) or the Customer requests any changes to be made (including, without limitation, changes in logos, colours, styles, materials, etc.) and which changes may be accepted by the Company in writing, the Customer will be responsible for and pay for all extra costs and charges associated with the changes.

The quantity of specially ordered goods actually delivered may vary from the ordered quantities more or less by 5%, and the Customer shall accept (without any claim for any overage or shortage) and pay at the unit price for the quantity of goods actually delivered within that range.

The Company shall be entitled to increase the price for specially ordered goods and services if there is an increase in the cost to the Company of supplying the goods or services due to changes in the costs of raw materials, exchange rate fluctuations or other increases in the cost to the Company of supplying the goods or services.

The Customer further acknowledges and agrees that any illustration or sample of mock-up of goods which may be supplied by or to the Customer is intended merely to present a general idea of the goods or services to be provided and that nothing in such illustration or sample shall form part of the agreement to provide goods or services nor constitute a sale by sample. The Customer further acknowledges and agrees that illustrations or samples of mock up of goods may vary from the end product due to differences in materials.

Without in anyway limiting Clauses 6 or 18, the Customer acknowledges that specially ordered goods are generally obtained from offshore suppliers and that delivery times will be effected by the time frame in which artwork is approved by the Customer, the production schedules of such suppliers, shipping schedules and times and other like matters beyond the control of the Company.

In the event the Customer provides the Company with specifications for the provision of goods or services by the Company for the Customer, the Customer warrants to the Company that the specifications and any goods or services supplied by the Company based on the said specifications will comply with all applicable laws relating to the supply of such goods and services and not infringe the trade mark, copyright, patent, design, other intellectual property rights or other rights of any third party, and the Customer shall indemnify and keep the Company fully indemnified from and against any and all claims, liabilities, obligations, expenses or damages the Company may suffer or incur as a result of the use by the Company of the said specifications in the provision of such goods or services to the Customer.

10. **Customer Materials**

The Customer shall be fully responsible for ensuring that it keeps and maintains duplicate originals or copies of any materials and other property which it provides to the Company. Any such materials or property provided to the Company shall be held or used by the Company solely at the risk of the Customer, and subject to Clause 11 the Company shall not be under any liability of any nature whatsoever to the Customer for loss or spoilage of, or damage to, such materials or property.

11. **Limitation of Liability**

To the maximum extent permitted by law and subject to the following paragraph of this Clause 11, the Company shall not be under any liability, whether in contract, tort or otherwise, for any injury, damage or loss whatsoever arising in any way in connection with the supply or use of the goods or from any services provided, including (without limitation) direct, indirect, special or consequential loss or damage of any kind arising from claims by the Customer, third parties or otherwise. For the purposes of the FTA the Customer agrees that it is fair and reasonable that the parties are bound by the provisions in these Conditions. For the purposes of the CGA, the Customer represents and warrants that it is acquiring the goods and services for business purposes.

If rights are conferred upon the Customer or obligations are imposed upon the Company by the CGA, FTA or other law which cannot be excluded, the provisions of this Clause 11 shall be read subject to those rights or obligations, and to the extent permitted by such legislation the Company hereby expressly limits its liability under any such legislation to the maximum extent permitted by law.

Subject to the preceding paragraph of this Clause 11, the Customer agrees that the liability of the Company (which cannot be limited beyond the following provisions) is limited to:

- (a) in the case of the supply of goods, any 1 or more of the following (at the Company's option):
 - (i) the replacement of the goods or the supply of identical goods;
 - (ii) the repair of the goods; or
 - (iii) the refund of the price (or other consideration) paid for the goods; or
- (b) in the case of the supply of services, any 1 or more of the following (at the Company's option):
 - (i) the supply of the services again to remedy any failure; or
 - (ii) the payment of the costs of having the services supplied again or to have the failure remedied.

Without reducing the effect of, and subject always to, the preceding provisions of this Clause 11, in no event will the Company be responsible for printing, embroidery or other alterations made to goods for or on behalf of the Customer, and the Company's total aggregate liability (if any) to a Customer for any particular order for the supply of goods or services by the Company to the Customer will not, in any event, exceed the amount invoiced by the Company to the Customer for the said order.

12. **Shortages**

Claims for shortages must be made in writing within 48 hours of delivery of goods and any shortages must be indicated on the delivery note at the time of delivery, failing which any such claim shall to the extent permitted by law be deemed to be waived by the Customer.

13. **Goods Return Policy**

Goods may only be returned if they are damaged (prior to delivery), not the ordered goods, oversupplied or defective. Customers wishing to return goods must notify the Company within 3 days of delivery of goods and the goods must be returned to the Company within 10 days of delivery of goods, failing which the basis for any such claim for return shall to the extent permitted by law be deemed to be waived by the Customer.

To the extent permitted by law, no claims for damage will be entertained unless the goods are noted as being “damaged” on the delivery note at the time of delivery and the claim has been made within 3 days of delivery of the goods.

To the extent permitted by law, the Company will not accept any goods (even, without limitation, if they are not the ordered goods or oversupplied) for return which have been printed, embroidered or otherwise altered in anyway. The Company therefore encourages the Customer to fully inspect all goods and services provided by the Company prior to goods being altered, particularly where they may be forwarded directly to a printer, embroiderer or otherwise to be worked.

The Company may (but is not obliged to) accept goods that are not damaged, oversupplied or defective for return on terms and conditions determined by the Company in its absolute discretion.

In the event the Company agrees to the return of goods or any part thereof by the Customer, the goods will be at the Customer’s risk until such time as the goods reach the Company’s premises. All expenses of return will be borne by the Customer.

14. **Returns**

Before any goods may be returned Customers must phone the Company’s Customer Service Department for authorisation of a Goods Return Authority (**GRA**) number. Goods must be returned by and at the Customer’s expense in their original packaging with a copy of the original invoice for the goods and the GRA number must be clearly marked on the outside of the box or other packaging in order for goods to be accepted by the Company’s staff. Goods returned without a GRA number cannot be accepted by warehouse staff. The issue of a GRA number and acceptance of returned goods by the Company’s staff does not constitute acceptance by the Company of the Customer’s claim for return.

15. **Title**

Title to and property in goods supplied by the Company shall not pass to the Customer until the Company has received payment in full of the price of all goods supplied by the Company to the Customer at any time and the Customer has discharged all existing indebtedness to the Company, whether for the price of the goods or services supplied or for any other amount which may be owing by the Customer to the Company on any other account (some of which may not necessarily be due for payment); provided however that the Customer shall bear the risk of any loss or damage to or deterioration of the goods from whatever cause arising following delivery of the goods to the Customer in accordance with Clause 5.

Until the price has been so paid:

- (a) The Customer shall store the goods in such a place and manner that they are clearly identified as the property of the Company which the Customer is holding as the Company’s bailee.
- (b) The Customer may resell the goods in the ordinary course of its business (but may not otherwise sell or encumber the goods) and if it does so shall receive the proceeds of resale as trustee of the Company, and shall hold such proceeds as such. The Company shall be entitled to trace the proceeds of resale.

- (c) The Company shall have the right, at any time and without prejudice to any other remedies:
 - (i) to enter without prior notice any premises where the goods may be without liability for trespass or any resulting damage, and to repossess any of the goods; and
 - (ii) to require the Customer not to resell or part with possession of, otherwise dispose of, charge or otherwise encumber or in any way alter the goods until payment is made in full.

The Customer hereby irrevocably authorises the Company and its agents to do the things referred to in this Clause, and shall indemnify and keep the Company and its agents fully indemnified from and against any and all claims, liabilities, obligations, expenses or damages they may suffer or incur as a result of doing the things authorised by this Clause.

The Company's right to retain title of goods shall not affect its rights as unpaid seller.

The Customer hereby grants the Company an irrevocable perpetual licence to sell all goods (including, without limitation, specially ordered goods, goods which have been embroidered, printed or otherwise altered by or on behalf of the Customer) which are not paid for by the Customer, and the Customer warrants to the Company that the sale of such goods by the Company will not infringe the trade mark, copyright, patent, design, other intellectual property rights or other rights of any third party, and the Customer shall indemnify and keep the Company fully indemnified from and against any and all claims, liabilities, obligations, expenses or damages the Company may suffer or incur as a result of the sale of such goods by the Company. The ability of the Company to sell such goods shall not affect its rights as unpaid seller.

16. **Security Interest**

The Customer:

- (a) agrees that these Conditions constitute a security agreement and grants a security interest in the goods and their proceeds to the Company;
- (b) agrees that these Conditions create a security interest in the goods and their proceeds in favour of the Company to secure the purchase price of the goods supplied by the Company to the Customer; and
- (c) further, and separately from the preceding provisions of this Clause 16:
 - (i) agrees that these Conditions also create a security interest in all of the Customer's Other Property, although such security interest is not intended to prevent the Customer from transferring such Other Property in the ordinary course of the Customer's business; and
 - (ii) separately charges all land owned now and in the future by the Customer whether owned alone or jointly as a tenant in common or as a joint tenant,

in favour of the Company to secure payment and performance of all the Customer's obligations under these Conditions, all orders for goods and/or services from the Customer which are accepted by the Company and all goods and services supplied by the Company to the Customer.

For the purpose of the charge over land granted by the Customer in favour of the Company in this Clause, the Customer hereby agrees to and grants a mortgage over such land to the Company and consents to a caveat being lodged by the Company and undertakes that it will not take any steps to remove or withdraw the caveat while any amount is owed to the Company. The grant of the mortgage will be governed by the most up to date Auckland District Law Society memorandum of mortgage with the priority amount, for the purposes of sections 90, 91 and 92 (as the context requires) of the Property Law Act 2007, equal to twice the amount owing to the Company at the time the instrument is lodged or submitted by the Company for registration at Land Information New Zealand.

The Customer further authorises, and agrees to do and sign all such things as may be necessary (including, without limitation, executing any documents) for, the Company to register a financing statement or a financing change statement with respect to the security interest:

- (a) in the goods; and also
- (b) in the Other Property,

and that the security interest created under these Conditions constitutes and remains a first ranking perfected security interest over the goods.

The Customer agrees that

- (a) nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Conditions;
- (b) that its rights as debtor in sections 116, 120(2), 121, 127, 129 and 131 of the PPSA shall not apply to these Conditions;
- (c) it shall notify the Company in writing of a change of its name at least 14 days prior to the date on which the change of name becomes effective; and
- (d) it waives any right to receive a copy of a verification statement under the PPSA.

The Customer waives its right to receive any notices required to be given by the Company to the Customer under the PPSA, except to the extent the requirement to give notices cannot be waived or excluded under the PPSA.

The Customer agrees that all payments made by the Customer to the Company may be applied by the Company to obligations owing by the Customer to the Company in any manner as the Company sees fit.

The Customer and the Company agree that the individual prices at, and the other terms of supply on, which goods or services are supplied by the Company to the Customer are confidential and that except as required by the PPSA neither the Company nor the Customer will disclose those individual prices or other terms of supply.

Unless the context otherwise requires, expressions and terms used in this Clause 16 have the same meaning as those expressions and terms used in the PPSA.

17. **GST**

If prices published by the Company or included in an order by a Customer do not expressly indicate that the prices include GST (in the case of an order by a Customer, by express reference on the face of the order and not by incorporation or reference of conditions of purchase), then the Customer will be required to pay the Company the amount of the price for the goods and services plus GST and the following provisions of this Clause 17 shall apply.

The consideration payable by the Customer for goods and services represents the value of any taxable supply for which payment is to be made. If a taxable supply is made to the Customer, then the Customer must also pay at the same time and in the same manner as the value is otherwise payable the amount of any GST payable in respect of the taxable supply.

Expressions and terms used in this Clause 17 have the same meaning as those expressions and terms used in the GST Act.

18. **Force Majeure**

The Company shall not be liable for any direct, indirect special or consequential loss or damage of any kind arising from non-delivery or delay in delivery of any goods or services caused by act of God, riot or civil commotion, strike, lock out, labour disputes, fire, flood, drought, power restrictions, act of government, acts of terrorism, delays in transport, breakdowns in machinery, failure to obtain or shortages of raw materials or other supplies obtained from 3rd parties or any cause whatsoever beyond its control.

19. **Miscellaneous**

Nothing in these Conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including, without limitation, the CGA and FTA) and which by law cannot be excluded, restricted or modified.

These Conditions are subject to variation by the Company by notice to the Customer.

Headings used in these Conditions are for convenience only and shall be ignored in construing these Conditions.

CGA means the Consumer Guarantees Act 1993.

Ex Works has the meaning ascribed to that term by Incoterms with the place of delivery being the Company's premises from which the goods are made available by the Company for collection by the Customer.

FTA means the Fair Trading Act 1986.

GST Act means the Goods and Service Tax Act 1985.

Incoterms means the International Chamber of Commerce official rules for the interpretation of trade terms known as "Incoterms 2010".

Other Property means all the present and after-acquired property of the Customer whether acquired alone or jointly as a tenant in common or as a joint tenant.

PPSA means the Personal Property Securities Act 1999.

References to any document (including these Conditions) are references to that document as varied, amended, consolidated, supplemented, novated or replaced from time to time.

References to any law are references to that law as amended, consolidated, supplemented or replaced from time to time.

The failure of the Company to enforce or exercise at any time or for any period of time any term of any contract incorporating these Conditions shall not constitute or be construed as a waiver of such term and shall in no way affect the Company's right thereafter to enforce or exercise same.

Any provision of these Conditions which is or becomes prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective and severed to the extent thereof without invalidating any other provision of these Conditions, and any such prohibition or unenforceability shall not invalidate such provision in any other jurisdiction.

These Conditions and any order for goods and services from the Customer which may be accepted by the Company shall be governed by and construed in accordance with the laws of New Zealand and the Customer hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New Zealand and of any Courts which may hear appeals therefrom; provided however that these Conditions and any such order may be enforced by the Company against the Customer in any other jurisdiction.